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Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12th Street, SW, Suite TW-A325  
Washington, DC 205554

November 5, 2009

Re: Reply Comments- WC Docket No.  
09-153

Dear Ms. Dortch:

The Federal Communications Commission's (FCC) August 25, 2009 Public Notice (Notice) requests comment on Level 3 Communications' Petition for a Declaratory Ruling that Certain Right-Of-Way Rents Imposed by the New York State Thruway Authority (NYSTA) are Preempted Under Section 253. The New York State Chief Information Office/Office for Technology (CIO/OFT) would like to take this opportunity to submit comments in this matter.

Since 2007, New York State has worked aggressively to develop and adopt a broadband strategy with the long term goal of bringing high speed, high capacity broadband to all New Yorkers. The New York State Universal Broadband Strategic Roadmap presents this strategy which sets forth the following goals:

- Provide all New Yorkers with access to high speed, affordable broadband services from anywhere, at anytime;
- Close the digital divide and increase digital literacy levels by providing training and educational opportunities in unserved and underserved, urban and rural communities;
- Foster economic development and build stronger public/private partnerships;
- Accelerate the use of state e-government services offered over the Internet to citizens, businesses and visitors;
- Create jobs through innovative community-based digital literacy and technology training programs to increase household technology adoption rates;
- Achieve and maintain speed and coverage goals aligned with state and federal policies to achieve and sustain competitive advantages; and
- Align State strategies with the principles and program goals of the American Reinvestment and Recovery Act (ARRA) of 2009 to optimize funding that stimulates the New York State economy.

The New York State Strategy's recommended approach to accomplishing the above-mentioned goals is a comprehensive and holistic one. The Strategy seeks to accomplish these goals by placing the focus on:

- Accelerating broadband infrastructure build outs for residential, commercial and government institutions;
- Increasing adoption rates and digital literacy programs to increase computer proficiency levels at home and at work; and
- Stimulating demand for broadband services to attract and retain a strong digital economy.

#### The NYS Thruway Fiber Project

In furtherance of the strategy outlined above, CIO/OFT, with the support of NYSTA, submitted a proposal entitled "NYS Thruway Fiber Project", to the National Telecommunications and Information Administration (NTIA) seeking funding under the Broadband Technology Opportunities Program (BTOP). The project seeks to utilize NYSTA's fiber optic network to install dark fiber network along the NYS Thruway from the NY-PA state line to Yonkers, enabling CIO/OFT to create local fiber optic connections to counties adjacent to the Thruway. These local fiber optic tributaries will be used to:

- Provide dedicated cost-effective and high-speed, high-capacity delivery of State applications to local governments; and
- Provide carriers, such as Internet Services Providers and/or wireless providers, with dark fiber optic facilities to extend their networks to new (unserved/underserved) areas with low cost, high speed transport from their existing territories.

This will introduce new, and foster, additional competition by significantly reducing the capital expenditures traditionally associated with extending the reach of a service provider's network with the expectation that these "start-up's" would reinvest those capital expenditure funds in "last mile" solutions for the betterment of the citizens in unserved, underserved and economically-disadvantaged communities. The project will provide a cost effective means for carriers to reach these less populace counties.

NYSTA played an important role in the submission of this application as the project's success is contingent upon access to NYSTA's fiber optic network. In addition to allowing CIO/OFT to occupy its right-of-way (ROW), which runs the length of the New York State Thruway from the New York City line to Pennsylvania (a distance of approximately 540 miles), NYSTA has stated their willingness to provide CIO/OFT with access to innerduct for the entire length of the ROW. In NYSTA's letter of support, which was submitted to the NTIA as part of our application, NYSTA stated the following with respect to its willingness to assist CIO/OFT in facilitating the expansion of broadband:

NYSTA can work with CIO/OFT to facilitate broadband service in support of local government agencies, including public safety organizations that serve these communities. NYSTA is willing to become involved in the planning of this project and will necessarily have an appropriate role in the ongoing operation of the



project with respect to facilitating access to the Thruway ROW to CIO/OFT and private entities to provide broadband service to unserved and underserved communities along the ROW.

In addition to NYSTA's support of the Thruway Fiber Project, by allowing our agency access to their rights of way and to use their conduits, NYSTA has been a long time partner in the State's efforts to connect governmental entities around the state to the internet, thus enabling the State to deliver its services to all New Yorkers in an effective and efficient manner. The State of New York recognizes the importance of universal deployment of broadband and is committed to facilitating increased and affordable access to broadband for all New Yorkers. NYSTA, through its support of CIO/OFT's New York State Thruway Fiber Project and through its long time partnership with this agency, is doing its part to assist in the expansion of broadband to unserved and underserved communities.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'S. Beaudoin', with a stylized flourish at the end.

Susan E. Beaudoin, Esq.

Counsel

NYS Office of the Chief Information Officer/Office for Technology

